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October 9, 2009

Sent by Facsimile to Chambers (with permission)

The Honorable Charles Wolle
Chief U.S. Magistrate Judge
United States District Court
Southern District of Iowa
United States Courthouse
131 E. Fourth Street
Davenport, Iowa 52801-1516

Re: *Brubaker v. Deere & Company, et al.*, Case No.08-CV-00113-CRW-TJS
Letter Brief to Court

Dear Judge Wolle:

As the Court will recall, at the end of the close of evidence, Plaintiffs requested that the testimony and exhibits from the preliminary injunction be included as part of the evidence in this trial based on Federal Rule of Civil Procedure 65(a)(2). Although Plaintiff's Trial Brief and Proposed Pretrial Order make no reference to Rule 65(a)(2), Plaintiffs understood the Rule to automatically make any admissible evidence received by the Court at the preliminary injunction hearing part of the record that did not have to be repeated at trial or included as an issue to be determined in the pretrial order. Rule 65(a)(2), Federal Rules of Civil Procedure. *See Dupuy v. Samuels*, 423 F.3d 714, 722 n.2 (7th Cir. 2005); *International Business Machines Corp. v. Johnson*, 629 F.Supp.2d 321, 323 (S.D.N.Y. 2009); *Francisco Sanchez v. Esso Standard Oil Co.*, 572 F.3d 1, 20 n.12 (1st Cir. 2009) ("we note that any admissible evidence that the district court received on the preliminary injunction motion has already become a part of the trial record and need not be repeated at trial"); *Project Strategies Corp. v. National Communications Corp.*, 948 F.Supp. 218, 221 (E.D.N.Y. 1996).

Plaintiffs believe that they advised the Court in the first few days of trial in an off the record discussion that they were intending to call Ms. McLemore-Demers by telephone to supplement the testimony she gave at the preliminary injunction hearing.

Respectfully submitted,

s/Susan Martin

cc: Counsel for Defendants (via email)